IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1805 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HIRABHAI MEPABHAI HARIJAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1805 of 2002

MS BANNA DUTTA FOR MR AR SHAIKH for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/04/2002

ORAL JUDGEMENT

19-12-2001 by the Dist. Magistrate, Rajkot

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 19-12-2001 passed by the District Magistrate, Rajkot and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, she cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. According to learned advocate for the petitioner, the detenu has submitted a representation to the authority on 21-1-2002 and it came to be rejected on 21-2-2002 i.e. after the approval of the order by the State Govt. Learned AGP has fairly admitted the fact that representation has been decided after the State Govt. has approved the order.

4. In the instant case, it appears that though representation dated 21-1-2002 has been sent to detaining authority, same has been decided decided on 21-2-2002 i.e. after the State Govt. has approved the order which makes the detention order illegal. To support her arguments, she has produced a letter dated 29-1-2002 sent by the District Magistrate, Rajkot in this regard. Same is ordered to be taken on record. Moreover, there is a delay also in deciding the said representation. The Apex Court placing reliance on a decision of the Constitutional Bench in K.M.Abdulla Kunhi and B.L.Abdul Khader V. Union of India, (1991) 1 SCC 476 : (1991 AIR SCW 362), has held in a case of Rajammal Vs. State of Tamil Nadu and another reported in AIR 1999 S.C. 684 as under:

> "Detention-Unexplained delay of five days in considering and disposing detenu's representation-Mere absence of Minister at Headquarters not sufficient to justify delay-Detention vitiated."

5. It is to be noted that in this case representation dated 21-1-2002 has been decided by the detaining authority on 21-2-2002 i.e. after the State Govt. has approved the order. It is also to be noted that no satisfactory explanation has been put forward by the respondents about the delay in deciding the representation. Therefore, in view of the fact that the aforesaid representation has been decided after the

approval of the order by the State Govt. and also in view of the aforesaid judgment, the continued detention of the detenu is bad and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

6. The petition is allowed. The impugned order of detention dated 19-12-2001 passed against the detenu is hereby quashed and set aside. The detenu Hirabhai Mepabhai Harijan is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.Dholakia,J.)

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